

CHAPTER 2

STATUTES, RULES, & CASE LAW

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CHAPTER 2

OVERVIEW OF STATUTES, RULES AND CASE LAW GOVERNING COURT REPORTERS IN THE STATE OF INDIANA

Judge's General Authority to Hire a Court Reporter

Although there may exist specific statutory authority to hire a court reporter within a specific statute that creates a particular court, IC 33-15-23-1(a) generally authorizes the judge to hire a court reporter. IC 31-31-6-1 authorizes the hiring of a court reporter to serve in a court with juvenile jurisdiction.

Statutes Defining Requirements for Office

Oath and Bond

IC 33-15-23-3 requires that a court reporter undertake an oath of office at the time of appointment.

IC 33-15-24-1(c)(1) & (2) require a court reporter to post the bond required of a notary public and to obtain a seal "before performing any official duty". IC 33-16-2-1(e) provides that a notary public must post a \$5,000 bond with the Indiana Secretary of State.

Some counties have procured blanket bonds. See IC 5-4-1-18(b). The court reporter should check with the judge to confirm whether a blanket bond has been procured and whether the court reporter is within the scope of coverage.

Age, Sex, Anti-Nepotism, and Residency Requirements

IC 33-15-24-1(a)(4) expressly authorizes a court reporter to perform any duty conferred by statute upon a notary public. General Indiana requirements for the status of a notary public may be incorporated by reference. IC 33-16-2-1(a)(1) requires that a notary public must be at least eighteen (18) years of age. A court reporter may be required to meet this requirement.

IC 33-15-23-2 expressly prohibits discrimination based upon gender. A judge must act "without bias or prejudice" in fulfilling "administrative responsibilities". See Indiana Judicial Canon 3(C)(1).

IC 33-15-23-2 expressly prohibits the judge from hiring a son or daughter as a court reporter. Jud. Canon 3 (C)(4) requires that a judge shall avoid nepotism and

favoritism. Indiana's general anti-nepotism statute, IC 4-15-7-1, may govern the relationship between a court reporter and a judge.

IC 33-16-2-1(a)(2) requires that a notary public be a "legal resident" of the State of Indiana.

Lucrative office

The position of a court reporter may constitute a "lucrative office" within the scope of Article 2 § 9 of the Indiana Constitution. This section requires that a person not hold more than one (1) "lucrative office" at one time. See IC 33-16-2-7.

Private Practice

It is recommended that a court reporter refrain from engaging in a private practice as notary public, although such private practice may be legally permitted.

A court reporter must not charge a fee to notarize any document during regular office hours. In the event that a court reporter engages in private practice as a notary public after regular office hours, the maximum fee that may be charged for notarization of a signature on a document is two dollars (\$2.00). See IC 33-16-2-7 and IC 33-16-7-1 (maximum fee for performance of notarial service is two dollars (\$2.00); no fee charged for notary services rendered in capacity of public official).

The scope of a notary public's private practice may include the making of a record and/or transcript of a deposition. In the event that an election is made to engage in private practice, a court reporter should become familiar with both the Federal Rules of Civil Procedure and the Indiana Rules of Civil Procedure governing depositions. See F.R.C.P. 26, 30, 32 and Ind. Trial Rules 26, 27, 30, 31, 32, 37, and 45.

A court reporter may not use any court equipment in a private practice.

Duties of a Court Reporter

Statutes

IC 33-15-24-1 generally describes the duties of a court reporter. This statute provides as follows:

- (a) Every official circuit, superior, criminal, probate, juvenile, and county court reporter appointed under IC 33-15-23-1 or IC 33-10.5-8-2 is authorized and empowered to:
 - (1) Take and certify all acknowledgments of deeds, mortgages, or other instruments of writing required or authorized by law to be acknowledged;
 - (2) Administer oaths generally;

- (3) Take and certify affidavits, examinations, and depositions; and
- (4) Perform any duty now conferred upon a notary public by the statutes of the state of Indiana.
- (b) Any official reporter taking examinations and depositions shall have the right to:
 - (1) Take them in shorthand;
 - (2) Transcribe them into typewriting or longhand; and
 - (3) Have them signed by the deposing witness.
- (c) Before performing any official duty as authorized, an official reporter shall:
 - (1) Provide a bond as is required for notary publics; and
 - (2) Procure a seal, which will stamp a distinct impression indicating his official character, to which may be added any other device as he may choose.

A court reporter possesses the power to administer oaths; a court reporter may take and certify affidavits, examinations, and depositions. See T. R. 30.

T. R. 74(C) and Crim. R. 5 describe the basic duties of a court reporter during a jury trial. T. R. 74(C) requires that “it shall be the duty” of each court reporter:

“ . . . to be promptly present in court, and take down . . . the oral evidence given in all causes, including both questions and answers, and to note all rulings of the judge with respect to the admission and rejection of evidence and the objections . . . thereto, and write out the instructions of the court in jury trials. The court reporter, when so directed, shall record the proceedings and make a transcript as provided in subsection (A) of this rule”

These duties are discussed in detail in Chapters 3 and 4. The duties of a court reporter with respect to preparation of a transcript are discussed in detail in Chapter 5.

Various other criminal rules describe the duty of a court reporter during a criminal jury trial in greater detail. See subsections Crim. R. 5, 10, 11, 24, and Ind. Post-Conviction Rule 1, herein.

As noted in Chapter 1, a court reporter is an officer of the court under the Ind. Code of Judicial Conduct canons. A court reporter is required to use common sense and powers of observation in order to spot situations where the fair and impartial administration of justice may be threatened. A court reporter is under a continuing obligation to raise any perceived concerns to the judge's attention.

The judge may assign additional duties, including but not limited to the duty to aid in the administration of the judge's calendar, in order to ensure that matters taken under advisement are ruled upon in a timely manner. A court reporter should clearly

understand the scope of the duties assigned, and a court reporter should clearly distinguish those duties from duty assignments made to other court personnel.

Confidentiality

A relationship of utmost loyalty and trust exists between a court reporter and the judge. The judge is ethically responsible for the acts and omissions of the court reporter. Jud. Canon 3(C)(2). A court reporter is permitted access to confidential information. A court reporter expressly undertakes the duty to preserve the confidentiality of matters that come before the judge. See Jud. Canons 3(B)(12) and 3(C).

Ind. Administrative Rule 9 lists and describes various confidential court matters. Admin. R. 9 appears below as follows:

Administrative Rule 9 - CONFIDENTIALITY OF COURT RECORDS

In accordance with IC 5-14-3-4 (a) (8), the following court records are hereby declared confidential:

- (A) All adoption records created after July 8, 1941, except those specifically declared open under statute;
- (B) Pursuant to statute, all records relating to Acquired Immune Deficiency Syndrome;
- (C) Pursuant to statute, all records relating to child abuse not admitted into evidence as part of a public proceeding;
- (D) Pursuant to statute, all records relating to drug tests not admitted into evidence as part of a public proceeding;
- (E) Grand jury proceedings;
- (E) All juvenile proceedings, except those specifically open under statute;
- (G) All paternity records created after July 1, 1941;
- (H) Pursuant to statute, all pre-sentence reports;
- (I) Written petitions to permit underage marriages and orders directing the Clerk of Court to issue a marriage license to underage persons;
- (J) Only those arrest warrants, search warrants, indictments and informations ordered confidential by the trial judge, prior to return of duly executed service;
- (K) All medical, mental health, or tax records unless:
 - (1) determined by law or regulation of any governmental custodian not to be confidential;
 - (2) released by the subject of such records; or
 - (3) declared by a court of competent jurisdiction to be essential to the resolution of litigation;

- (L) Personal information relating to jurors not entered into evidence as part of a court proceeding; and
- (M) All orders of expungement entered in criminal or juvenile proceedings.
- (N) Pursuant to statute, all confidential information relating to protective orders not admitted into evidence as a part of a public proceeding.

Certain statutes declare particular documents and proceedings confidential. Examples include, but are not limited, to the following:

- (1) AIDS [IC 16-41-8-1 and IC 35-38-1-9.5 [(after conviction); IC 35-38-1-10.7 (before conviction)];
- (2) pre-sentence reports [IC 35-38-1-12 and IC 35-38-1-13, including those prepared by the offender IC 35-38-1-11];
- (3) grand jury proceedings [IC 35-34-2-4(i) and IC 35-34-2-10];
- (4) certain marriage records [IC 31-11-1-6], [IC 31-11-2-3], and [IC 31-11-4-12];
- (5) mental health records [IC 16-39-2-6, IC 16-39-2-8, IC 16-39-3-3, IC 16-39-3-6, IC 16-39-3-7, and IC 16-39-3-10];
- (6) juvenile records [IC 31-39-1-1, IC 31-39-1-2, and IC 31-39-2-8], and
- (7) public employee personnel records [IC 5-14-3-4(b)(8)].

The content of a court's audio electronic recording tape or of a court's computer disk determines whether that tape or disk is confidential.

Local practice of the court may vary with respect to the scope of material that is released to the public, including the media, during a trial. One local practice may be that no electronic recording tape and/or transcript is released to any member of the public, including the press, unless the court reporter has first obtained the express verbal consent of the judge. See Chapter 1. The court reporter must check with the judge and obey any policy established with respect to release of materials during trials.

The list contained in Admin. R. 9 is not inclusive of all Indiana statutory confidentiality provisions. See subsection Crim. R. 5, subsection Crim. R. 10, subsection Crim. R. 25 and subsection, Access to Public Records, herein.

IC 5-14-3-10(a) and (b) and Admin. R. 10(C) provides for both criminal and civil disciplinary sanctions for the disclosure of confidential material; particular statutes may provide specific civil and/or criminal penalties.

The judge may exercise discretion and take action to seal or otherwise make confidential records that would otherwise be public under T.R. 26(C) and IC 5-14-3-9. In the event that a judge should utilize one or more of these procedures to enter an order declaring that a record is confidential, this order must be followed.

Confidentiality of Juvenile Proceedings

Admin. R. 9 generally list juvenile records as confidential "except those specifically open under statute". IC 31-39-2-8(b) lists types of juvenile records declared as "confidential". Transcripts are not listed in that statute. IC 31-39-1-1 contains no direct expression that transcripts are open to the public and transcripts are not expressly excluded from the scope of the statute. The present practice is to treat any audio tape recording or transcript in a juvenile proceeding as confidential.

If certain equipment requirements are met, certain detention hearings may be videotaped pursuant to Admin. R. 14(A)(3)(a) & (b).

Civil Liability; Tort Immunity

As a member of the judge's staff, a court reporter may enjoy federal absolute judicial immunity as long as the court reporter is acting pursuant to a valid order issued by the judge. See J.A.W. v. State, 650 N.E.2d 1142 (Ind. Ct. App. 1995), opinion on transfer 687 N.E.2d 1202 (Ind. 1997). As a member of the judge's staff, a court reporter may enjoy state common law absolute judicial immunity. See legal authority cited by the Court of Appeals in the case of Poole v. Clase, 455 N.E.2d 953 (Ind. Ct. App. 1983), opinion vacated upon other grounds 476 N.E.2d 828 (Ind.) As a member of the judge's staff, a court reporter may enjoy state common law tort claim immunity for acts and omissions within the scope of employment, pursuant to the Indiana Tort Claims Act. See IC 34-13-3-1 et seq. As a member of the judge's staff, a court reporter may enjoy immunity from arrest upon civil process while traveling to the courthouse. See IC 34-29-2-1(5).

In the event that the court reporter is sued, a court reporter is not entitled to legal defense counsel paid for at public expense. See IC 33-13-17-3. However, a court reporter may be covered by a county's general liability insurance policy.

Liability Insurance

Legislation permits a county to purchase comprehensive general liability insurance. See IC 34-13-3-20. Legislation passed in 1995 permits the fiscal body of a county to purchase crime insurance. See IC 5-4-1-15.1 and IC 5-4-1-18. A court reporter should check with the judge to ascertain whether such insurance has been procured by ordinance and whether the court reporter is a named insured. A court reporter should inquire whether either the judge or the county has obtained errors and omissions insurance coverage.

Contempt

A court reporter is subject to the contempt power of the Indiana Supreme Court. See Matter of Hatfield, 607 N.E.2d 384 (Ind. 1993). Neither a judge nor a court reporter may withhold any portion of the record from an appellant. See Crown

Aluminum Industries v. Wabash Co., 174 Ind. App. 659, 369 N.E.2d 945, 947 (1977). A court reporter may receive orders from the Clerk of the Court of Appeals; these orders are enforceable by contempt. Penalties for contempt may include fines and imprisonment. See IC 34-47-3-8.

The Court Reporter in Criminal Cases

Crim. Rule 5

Crim. R. 5 states as follows:

Every trial judge exercising criminal jurisdiction of this state shall arrange and provide for the electronic recording or stenographic reporting with computer-aided transcription capability of any and all oral evidence and testimony given in all cases and hearings, including both questions and answers, all rulings of the judge in respect to the admission and rejection of evidence and objections thereto, and any other oral matters occurring during the hearing in any proceeding . . .

The judge . . . may direct the court reporter . . . in his discretion, to make a transcription of recorded oral matters and certify the accuracy of the transcription . . .

The specific duties of a court reporter with respect to making a record in criminal trials are addressed in this rule. Criminal trials may be recorded either by an electronic recording device or by stenographic reporting with computer-aided transcription. The present practice is to accompany the audio electronic tape record with stenographic paper notes. Language of Crim. R. 5 permits the judge may waive the use of stenographic or paper notes in the exercise of discretion.

The duties of the court reporter described in Crim. R. 5 are substantially similar to those quoted from T. R. 74. Crim. R. 21 requires that both rules be read together in harmony.

Under language of Crim. R. 5 with respect to criminal trials, either the electronic recording tapes, the stenographic paper, notes, log, computer disks, or copy of the transcript must be retained by the court reporter, as follows: (a) ten (10) years for misdemeanors, and (b) fifty-five (55) years for felonies.

In the event that the audio electronic tape recording method is used, "a log denoting the individuals recorded and meter location of crucial events" shall be maintained. In the event that the stenographic reporting with computer-aided transcription method is selected, "disk and stenographic paper notes" shall be retained. Retention of records is discussed in more detail in Chapter 6.

In some instances, the tapes, paper notes and disks generated during the process of making a record are declared to be “confidential court” records; the content determines whether the tape or the disk is confidential. See subsection, Public Access to Records, herein.

Crim. Rule 24(D) & (I) - Criminal Death Sentence Cases

The specific duty of a court reporter in a trial of a case involving the possible imposition of a sentence of death is addressed in the language of Crim. R. 24(D). The rule requires "stenographic reporting with computer-aided transcription" of all oral testimony, argument or other matters for which a record is made under Crim. R. 5 in any trial or in any post-conviction proceeding. In the event a death sentence is imposed, the court reporter is required to begin the preparation of a transcript immediately. See Crim. R. 19 and Crim. R. 24(I). The requirement of filing a written praecipe is waived in capital cases. See Crim. R. 11, Crim. R. 19 and App. R. 2(A). A copy of a transcript shall be produced, filed and retained in accordance with Crim. R. 5 in death sentence cases.

Indiana Rules of Appellate Procedure App. R. 7.1 *Part II: Submission of Record in Electronic Format*, App. R. 7.1 (D) presently permit the filing of a transcript of the evidence on computer disk “. . . with the approval of the trial court, all parties on appeal, and the tribunal with original appellate jurisdiction . . .”. Standards for submission of the record in electronic format have been adopted. See appendix to the Appellate Rules.

Pursuant to Administrative Rule 6, the archival medium standard for court records is microfilm. Computer Output Microfilm (COM) technology is capable of making a transfer of a word processing document onto microfilm in an ASCII format. However, this method is incapable of transferring word processing codes such as pagination and line numbering, which are essential to the preparation of a transcript. The Indiana Supreme Court Records Management Committee is continuing work in this area, and court reporters should consult with the Indiana Supreme Court Division of State Court Administration for further developments. A court reporter with further questions should consult with John Newman, 317-232-2542.

Crim. Rule 8(c) - Criminal Instructions

This rule describes a court reporter's duty to make a record of instructions presented by the judge to the jury in criminal cases. The rule requires that a court reporter make a record of any objections to instructions. Crim. R. 21 requires that Crim. R. 8 be read in connection with T. R. 51(C). Because a wide variance regarding the practice of judges with respect to instructions exists, a more detailed discussion of making a record of instructions and objections is contained in Chapter 3.

Crim. Rule 10 - Guilty Plea

This rule requires that a court reporter make a record by “electronic recording device” of “the entire proceeding in connection with such plea and sentencing, including questions, answers, [and] statements” in both felony and misdemeanor cases where a guilty plea “is accepted”. A judge may order that a transcript of a guilty plea hearing and sentencing hearing be prepared and filed with the clerk of the court. If a transcript is not prepared and filed, either the audio electronic recording tape or the stenographic paper notes and computer disks, accompanied by a log denoting individuals recorded and meter location of crucial events must be retained by the court reporter, as follows: (a) for misdemeanors ten (10) years, and (b) for felonies fifty-five (55) years.

Guilty plea and sentencing audio electronic recording tapes, stenographic paper notes and computer hard drives, disks and compact disks, are expressly declared to constitute confidential court records until a transcript is prepared, certified and filed with the clerk of the court. See subsection, Confidentiality, herein.

IC 35-35-1-2 lists certain advisements that a judge must give a defendant before the judge may accept a guilty plea; the court reporter must make a record of the advisements stated by the judge to the defendant. See Griffin v. State, 617 N.E.2d 550 (Ind. Ct. App. 1993). In the event that the duties of a court reporter include assisting the judge in the preparation of Chronological Case Summary (CCS) entries, a CCS entry for a guilty plea hearing should expressly reflect that each of the listed advisements was presented by the judge to the defendant.

If certain equipment requirements are met, Admin. R. 14(A)(1)(c) permits the use of video tape in hearings concerning “the taking of a plea of guilty to a misdemeanor charge, pursuant to IC 35-35-1-2” by a “trial court”.

Missing Records

In the event that the electronic recording tapes, the stenographic paper notes, computer disks, (or a filed transcript) are unavailable for a particular guilty plea and sentencing proceeding, an offender may be entitled to have the conviction vacated. Availability of this relief may be pre-conditioned upon offender's attempt to reconstruct the missing record. The case of Curry v. State, 650 N.E.2d 317 (Ind. Ct. App. 1995) describes efforts made by one offender to reconstruct a missing record. The Court of Appeals held that offender showed sufficient diligence in the attempt to reconstruct the record and vacated the offender's conviction. In that case, the court reporter gave the offender an affidavit regarding the unavailability of the audio electronic recording tape; the tape had been destroyed after ten (10) years.

Crim. Rule 11 - Felony Guilty Plea and Sentencing or Probation Revocation; Advisements Required

Whenever a judge imposes a criminal sentence upon an offender after conviction or upon acceptance of a plea of guilty in a felony case, and whenever a

judge imposes a sentence upon a felony offender after probation has been ordered revoked (pursuant to IC 35-38-2-3), the judge must provide the offender with certain advisements regarding offender's constitutional right to appeal. Crim. R. 11 describes the advisements. In each such felony case, a transcript of "the entire proceedings in connection with such sentencing or probation revocation, including questions, answers, [and] statements shall . . . promptly" be prepared, certified, and filed in the same manner as other transcripts.

The language of the rule appears consistent with the requirements of IC 35-38-1-3. IC 35-38-1-3 requires that a court reporter prepare a transcript of the sentencing hearing in felony cases.

If certain equipment requirements are met, if offender files a written waiver of the right to be present and if the prosecutor consents, a sentencing hearing may be videotaped. See Admin. R. 14(A)(1)(d).

The current practice is to apply the requirements of Crim. R. 11 to sentencing hearings and revocation of probation hearings involving misdemeanor convictions.

Although not expressly required, Crim. R. 5 should be read in conjunction with Crim. R. 11. The court reporter should create and retain either a "log denoting the individuals recorded and meter location of crucial events" or the "disks and stenographic paper notes" for all sentencing and revocation of probation hearings.

Crim. Rule 17 - Newly Discovered Evidence; Juror Misconduct

Crim. R. 17 permits an offender to file a Motion to Correct Error before filing a praecipe. Generally, a Motion to Correct Error is filed when offender claims that new evidence has been discovered or when offender claims to have discovered misconduct by a juror. See Crim. R. 16 (A). The judge may hold hearings on the motion. In the event that a hearing is held, the court reporter "shall . . . record all such evidence" and prepare and file a transcript in the same manner as other transcripts.

If the offender elects to file a Motion to Correct Errors, the time in which to file the praecipe is extended until thirty (30) days after the judge rules on the Motion to Correct Error or thirty (30) days after the Motion to Correct Errors is deemed to be denied. See T. R. 53.3, Crim. R. 21 and Crim. R. 19.

Crim. Rule 19

An offender must file a Notice of Appeal within thirty (30) days of the sentencing, or within thirty (30) days after the judge's ruling on a Motion to Correct Errors, or within thirty (30) days after the Motion to Correct Error is deemed to be denied. If the Notice is not timely filed, "the right to appeal will be forfeited.

Crim. Rule 25 - Wiretaps

This rule requires that a court reporter prepare a transcript, if necessary, in cases where a wiretap search warrant has been issued. See IC 35-33.5-3-1(b) (if a person is examined under oath as a part of a probable cause determination, a court reporter prepares a "verbatim transcript of the examination", which is attached as an exhibit to the warrant).

The prosecutor is required to file documents, including a copy of the wiretap warrant, with the Court of Appeals "within ten (10) days after issuance" of the wiretap warrant. See IC 35-33.5-3-3 (ex parte de novo review is required). The "verbatim transcript of the examination" must be filed with a copy of the wiretap warrant.

Within sixty (60) days after termination of the warrant, the person whose communications were intercepted is entitled to notice of interception. The person whose communications were intercepted may be entitled to a copy of the warrant, including the probable cause transcript, upon the filing of a proper application. See IC 35-33.5-4-3(b).

The court reporter may be given custody of the sealed results of the interception. If so, the court reporter must retain the sealed results for a period of ten (10) years. See IC 35-33.5-5-2.

Wiretap warrant proceedings are expressly declared to be confidential. IC 35-33.5-5-5(c) provides a criminal penalty for improper disclosure. See subsection Confidentiality herein.

Evidence supporting the issuance of a wiretap search warrant may be presented by radio or telephone; in that event, IC 35-33-5-8 governs the procedure. See Cutter v. State, 646 N.E.2d 704 (Ind. Ct. App. 1995).

P-C.R. 1(5), (6), (7), and (9)

These rules govern the right of an offender to seek relief after the right to appeal has been forfeited (Crim. R. 19), waived (guilty pleas), or exhausted. P-C.R. 1(4)(g) permits the judge either to enter a judgment of summary dismissal or to enter an order for an evidentiary hearing. P-C.R. 1(5) describes the hearing; a "record of the proceedings shall" be made and "preserved". P-C.R. 1(6) describes the judge's duty to enter findings of facts and conclusions of law "whether or not a hearing is held". P-C.R. 1(7) provides that the State or an offender may appeal from either the denial or the granting of relief proceeds as an ordinary civil appeal. See App. R. 3(B). A Notice of Appeal is required. See App. R. 2(A).

P-C.R. 1(9)(b) describes the right of a pro se indigent offender to a transcript of a guilty plea and a guilty plea sentencing hearing before a P-C.R. 1(5) "hearing". See subsection The Court Reporter and the Rights of the Indigent Guilty Pleas and subsection Crim. R. 10, herein. If a transcript were prepared, certified and filed

immediately after a guilty plea and sentencing hearing, offender would contact the clerk of the court. The more common practice is that offender files a petition for post-conviction relief followed by a praecipe or motion for a copy of the guilty plea and sentencing transcript, and the court reporter prepares a transcript from the preserved audio electronic recording tape or the stenographic notes and computer disks.

If the parties file a consent in writing and if certain equipment requirements are met, a post-conviction hearing may be videotaped, pursuant to Admin. R. 14(A)(1)(e).

Selected Criminal Statutes Which Require that the Court Reporter Make A Record

IC 35-33-2-1 - Arrest upon issuance of a Warrant

A judge may hold a probable cause hearing before issuing an arrest warrant. In the event that a hearing is held, the court reporter may be required to make a record of the hearing pursuant to Crim. R. 5.

Verbal testimony supporting issuance of an arrest warrant may be presented by radio or telephone; in that event, IC 35-33-5-8(d) and (e) governs the procedure. See Cutter v. State, 646 N.E.2d 704 (Ind. Ct. App. 1995). The court reporter is required to transcribe the audio electronic tape made of the telephone conversation between the judge and the caller giving verbal testimony that supports the issuance of the warrant. If an affidavit is submitted by fax, the court reporter may be required to retype the fax transmission.

IC 35-33-3-2 - Fresh pursuit; warrant less arrest

In the event that a duly authorized police officer from a State outside of Indiana pursues a person into Indiana and arrests that person in Indiana, a hearing to determine the lawfulness of the arrest of that person shall be held. The judge may require that the court reporter make a transcript of this hearing pursuant to Crim. R. 5.

IC 35-33-5-1 - Search Warrants

A judge may hold a hearing to determine existence of probable cause to issue a search warrant.

IC 35-33-5-5(d) & (e) and IC 35-33-5-5.1 (gambling device) govern the disposition of items seized pursuant to a warrant. If a seized item is admitted into evidence so that the court reporter becomes responsible for it, the judge will issue an order regarding disposition. See Chapter 6.

If an appeal is undertaken, a photograph may be substituted for the item seized in the transcript. See IC 35-33-5-5(e) and App. R. 7.2(A)(3)(b).

Verbal testimony supporting issuance of a search warrant may be presented by radio or telephone; in that event, IC 35-33-5-8 governs the procedure. See Cutter v. State, 646 N.E.2d 704 (Ind. Ct. App. 1995). The court reporter is required to transcribe the audio electronic tape made of the telephone conversation between the judge and the caller, who presents verbal testimony that supports the issuance of the warrant. If an affidavit is submitted by fax, the court reporter may be required to retype a fax transmission.

IC 35-33-7-2(a) - Probable Cause Hearing After a Warrant less Arrest

After a warrant less arrest, a probable cause affidavit may be filed by the prosecutor, or IC 35-33-7-2 authorizes an oral hearing to determine the existence of probable cause. If a probable cause hearing is held, the court reporter is required to make a record of this hearing. A judge or any party may request that the court reporter prepare a transcript. See Crim. R. 5.

If certain equipment requirements are met, an initial hearing may be videotaped pursuant to Admin. R. 14(A)(1)(a).

IC 35-33-7-5 & IC 35-33-7-6 - Initial Hearing; Indigent Right to Counsel

In both felony and misdemeanor cases, the judge is required to hold an initial hearing. At this hearing, the defendant is provided an explanation of applicable constitutional rights. At the initial hearing, the judge enters a preliminary plea of not guilty for the defendant. If the judge finds that the defendant is unable to pay for legal counsel, legal counsel is provided at public expense. The judge may also set bail. At the initial hearing the judge may schedule pre-trial hearings and a pre-trial conference. See IC 35-36-8-3 (a), IC 34-10-1-2 and IC 35-36-8-1. The judge may require the court reporter to make a record of the initial hearing pursuant to Crim. R. 5.

The judge may schedule trial dates. It is very important to accurately make a record in any situation where the judge personally informs the defendant of a trial date. This protects the defendant's right to a speedy trial, and this allows the court reporter to testify as a witness as to the receipt of advance notice of the trial date by the defendant. See section, **The Court Reporter as a Witness**, herein.

If certain equipment requirements are met, an initial hearing may be videotaped pursuant to Admin. R. 14(A)(1)(a).

Defendant's Right to Waive Counsel; pro se status

Defendant does possess a constitutional right to waive the right to counsel and to precede pro se. If the defendant makes such a request, the judge must hold a hearing; certain advisements are given by the judge to the defendant. The judge may require that the court reporter make a record pursuant to Crim R. 5. In the event that pro se status is granted, the court reporter should accord the defendant the same

treatment provided to attorneys. See Jud. Canons 3(B)(4), (5), (6), (7), (8) and 3(C)(2). The pro se defendant is bound to follow all rules and procedures in the same manner as other attorneys.

IC 35-34-1-4, IC 35-34-1-6, & IC 35-34-1-8 - Motion to Dismiss

In both felony and misdemeanor cases, a defendant may file a motion to dismiss the information based upon either constitutional or statutory grounds. A motion to dismiss may also be filed in cases where an indictment was issued by a grand jury. See IC 35-34-1-7. A summary disposition is permitted under limited circumstances. A hearing is usually required. The judge may require that the court reporter make a record of the hearing pursuant to Crim. R. 5. A motion to dismiss may be argued on the omnibus hearing date. See IC 35-36-8-1.

Either the State or the defendant may elect to take an interlocutory appeal of the judge's ruling. See App. R. 4(B)(6), and e.g., State v. Peters, 637 N.E.2d 145 (Ind. Ct. App. 1994). (interlocutory appeal by State is authorized); and Benham v. State, 637 N.E.2d 133 (Ind. 1994) (interlocutory appeal by defendant; lack of territorial jurisdiction over crime), and Wheeler v. State, 662 N.E.2d 192 (Ind. Ct. App. 1996) (interlocutory appeal by defendant); Crim. R. 4(C) speedy trial.)

IC 35-36-3-1 - Competency to Stand Trial

In both felony and misdemeanor cases, the judge may decide that a defendant lacks mental ability to understand the nature of the proceedings and lacks ability to assist counsel. In that event, at least one (1) hearing is held. The judge may require that the court reporter make a record of the competency hearing pursuant to Crim. R. 5.

IC 35-34-2-10 & IC 35-34-2-14 - Grand Juries and Special Grand Juries

Either the prosecutor or the judge may convene a grand jury. See IC 35-34-2-2(b). Upon motion of the prosecutor and for good cause shown, the judge may order a special grand jury to convene; the powers and duties of a special grand jury are the same as those of a grand jury. See IC 35-34-2-14(b). The court reporter may be requested to make a record and to prepare a transcript of a grand jury or a special grand jury proceeding. See IC 35-34-2-3(d), IC 35-34-2-4(e) and IC 35-34-2-10(b). See subsection Confidentiality, herein.

IC 35-38-4-2 - The State May Bring an Appeal

The State is permitted to bring an appeal in a criminal case under certain circumstances.

Pre-Trial Civil and Criminal Discovery

Discovery Defined

Discovery refers to that portion of a civil or a criminal case during which one party may attempt to use certain methods authorized by the rules to determine before trial what evidence an adverse party may offer at trial.

Differences Between Civil and Criminal Cases - Immunity

Criminal discovery has constitutional aspects that are not generally present in civil cases. In criminal cases, trial by ambush is prohibited as a denial of a fundamental right to a fair trial. Upon proper request, the prosecutor has a duty to disclose all of the evidence favorable to the State and favorable to the defendant. A defendant possesses a constitutional right to be personally present at any critical stage of the case; a defendant possesses a constitutional right to a face-to-face confrontation with the witnesses against him.

A prosecutor may offer immunity from prosecution to a reluctant witness in order to procure testimony. Usually, a witness elects to refuse to answer a question based upon the exercise of the Fifth Amendment constitutional privilege against self-incrimination. See IC 35-34-2-8 (grand jury); IC 35-37-3-3 (during a hearing or a trial). In the event that the situation arises during a criminal jury trial, a hearing is conducted outside of the presence of the jury. In the event that immunity is granted, any continued refusal to respond to the question may be punished as direct criminal contempt. See IC 35-37-3-3(c) and IC 34-4-7-2. The court reporter is required to make a record of any such situation.

In a civil trial, a witness may claim the constitutional privilege against self-incrimination and refuse to testify. The judge may not confer immunity. The witness may be punished by being held in direct criminal contempt. See IC 34-47-2-2.

Motions to Suppress

The Supreme Court of the United States has developed the exclusionary rule for the purpose of excluding evidence seized in violation of defendant's constitutional rights. The rule mainly applies to evidence seized during warrant less searches, including searches incident to arrest, and to involuntary confessions. Usually, the defense will seek the application of the exclusionary rule pursuant to following steps: (1) filing a motion to suppress the tainted evidence prior to trial; (2) if that motion is overruled after an evidentiary hearing, filing a motion in limine immediately before trial; and (3) if that motion is overruled after an evidentiary hearing, making an objection to the evidence when offered at trial. The court reporter is required to make a record of any such hearing(s) and any at-trial objection(s) made. Steps one (1) and two (2) may be omitted, and the motion to suppress may be made during the course of the criminal bench or jury trial. In the event that the motion to suppress is made during a jury trial, a hearing is conducted outside of the presence of the jury. The judge may require that a court reporter make a record of any such hearing pursuant to Crim. R. 5.

Motions in Limine

In both criminal and civil cases where a jury trial is held, a motion in limine may be filed. Generally, a motion in limine is filed shortly before the commencement of trial. The purpose of filing a motion in limine is to obtain an advance preliminary ruling from the judge regarding the admissibility of a disputed item of evidence. In the event that the judge grants a motion in limine, that ruling requires parties and witnesses to adhere to special trial procedures regarding references to the contested item of evidence in the presence of the jury. If a motion in limine is granted by the judge, the contested item of evidence may not be mentioned during the trial. Counsel may seek relief from an order in limine during trial. In order seek relief the following procedure is used: (1) the offeror asks the judge to excuse the jury, (2) the judge may hear new argument concerning the admissibility of the disputed item of evidence, and (3) in the event that admission of the evidence is denied, an offer to prove is made in order to preserve error for appeal. If the judge determines that the disputed item of evidence is admissible, the item is admitted after the jury returns to the courtroom. Adverse counsel may object to the admission of the item. See Crim. R. 21 and T. R. 43(C).

Discovery Disputes - Protective Orders

In the event that pre-trial disputes arise regarding discovery, the judge may become involved. A party may file either a motion for protective order, a motion to compel discovery, and/or a motion for sanctions. The protective order is designed either to prevent discovery or to obtain some limit on the scope of discovery; a party may seek a protective order to preserve the confidentiality of a document. See Crim. R. 21 and T. R. 26(C). A hearing may be required; the court reporter may be required to make a record of the proceeding.

If a party's right to inspect documents becomes contested, the judge may be required to hold an in camera inspection of documents. The court reporter has a duty to make a record concerning both the identity of the documents before the judge and the judge's ruling concerning the existence of a right of access. See Pilarski v. State, 635 N.E.2d 166 (Ind. 1994).

Discovery Disputes - Sanctions

A motion to compel discovery and a motion for sanctions are utilized as methods to seek relief for violations of pre-trial discovery rules. See Crim. R. 21 and T. R. 37. A hearing may be required; the court reporter may be required to make a record of the proceedings.

Pre-Trial Order - T. R. 16, Crim. R. 21, and IC 35-36-8-3

A pre-trial conference resulting in the entry of a pre-trial order may occur in both civil and criminal cases. Crim. R. 21, T. R. 16 and IC 35-36-8-3 provide that either a judge or any party may move for a pre-trial conference. The purposes of a pre-trial conference are listed in T. R. 16(A). The purposes listed include "simplification of

the issues", "obtaining admissions of fact and of documents", and "exchange of names of witnesses". T. R. 16(J) provides that "the court shall make an order" describing any agreements made at a pre-trial conference. Usually, the judge will require a party to prepare the order. After the judge signs the order, it is entered on the Chronological Case Summary (CCS). The order is filed in that case's flat file folder. The order "shall control the subsequent course of the action, unless modified".

In a criminal case, a pre-trial conference may be videotaped if certain equipment requirements are met. See Admin. R. 14(A)(1)(b).

In a civil case, a pre-trial order may contain: (1) stipulations concerning the admissions made in an answer of a defendant, (2) stipulations relating to the admission of exhibits, and (3) lists of witness names and of exhibits. See Chapter 3.

Stipulations

"A stipulation of facts is an express waiver made in court or preparatory to trial, by the party or his attorney, conceding for the purposes of the trial the truthfulness of some alleged fact. It has the effect of a confessor pleading, in that the fact is thereafter to be taken for granted, so that one party need offer no evidence to prove it and the other is not allowed to disprove it."
County Department of Public Welfare of White County v. Trustees of Indiana University, 145 Ind. App. 392, 251 N.E.2d 456, 461 (1969).

A stipulation may be utilized in preparation of a preliminary or a final instruction by either a judge or any party. Counsel may request that the court reporter read a stipulation to a jury. The court reporter is required to make a record of any stipulation made during the course of a civil or criminal proceeding.

Special Rules and Statutes, Which Require that the Court Reporter Make A Record in Civil Cases

T. R. 51

This rule describes the court reporter's duty to make a record of the instructions presented by a judge to the jury in civil cases. See T. R. 74. This rule requires that the court reporter make a record of any objections to the instructions presented by the judge to the jury. Because a wide variance regarding the practice of judges with respect to instructions exists, a more detailed discussion of instruction procedures is contained in Chapter 3.

T. R. 59

A party to a civil case may file a motion to correct error. The filing of a motion to correct error is no longer a prerequisite to an appeal unless the losing party asserts: (1) a claim of newly discovered evidence (including juror misconduct), or (2) asserts a claim that the damages were either excessive or inadequate. See T. R. 59(A) & (H).

In a civil case, a party who lost after a jury trial may request that the judge act as a 13th juror [7th juror] and not enter judgment on the verdict. In the event that this request is filed, the court reporter may be requested to aid the judge in preparing a summary of the trial testimony. See T. R. 59(J).

App. R. 9

App. R. 9 describes the time periods in which a Notice of Appeal must be filed in civil cases. There is no trial rule counterpart to Crim. R. 19.

A party who desires to appeal in a civil case must file a Notice of Appeal within thirty (30) days of the entry of final judgment, or within thirty (30) days after the judge's ruling on a Motion to Correct Errors, or within thirty (30) days after the Motion to Correct Error is deemed to be denied. There is a special time period for interlocutory appeals. See subsection, Interlocutory Appeals, herein.

In 1996, the Court of Appeals adopted a policy that no extensions of time will be granted in any case where children are involved. This policy appears to apply to domestic relations disputes, paternity, and juvenile cases.

IC 34-13-5-6 & IC 34-13-5-8] - Public Lawsuits

A public lawsuit is filed by citizens or by taxpayers to challenge the expenditure of public funds, usually for a public works construction project. A party is permitted to file a motion for a special reporter so that preparation of a Record of Proceedings may be expedited. An interlocutory appeal may arise out of the judge's ruling. See subsection, Interlocutory Appeals, herein.

T. R. 56 - Summary Judgments

If the judge grants a motion for summary judgment in favor of one party, the other party may appeal, depending upon the language of the judgment entry. See T. R. 56(C). If the judge denies a motion for summary judgment, the party who filed the summary judgment may seek an interlocutory appeal. The judge must conduct a hearing on a motion for a summary judgment. See T. R. 56(B). A proper designation of evidentiary matters, which constitute a material issue of fact, may be made during the hearing. See Pierce v. Bank One-Franklin, NA, 618 N.E.2d 16, 18 (Ind. Ct. App. 1993). There is no statute or rule requirement that a court reporter make a record of a summary judgment hearing. The court reporter should ask either the judge or counsel whether a record is required in each case. See Chapter 3.

Interlocutory Appeals - App. R. 14

Appeals may be taken as a matter of right with regard to matters defined in App. R. 14 (A) and in these cases the Notice of Appeal must be filed within thirty (30) days of the entry of the interlocutory order.

All other interlocutory appeals are discretionary under App. R. 14(B) and require certification by the trial judge and acceptance of the appeal by the Court of Appeals. The appellant must file a petition to certify the ruling for interlocutory appeal within thirty (30) days of the entry of the interlocutory order. If the Court of Appeals accepts jurisdiction of the appeal after certification by the trial court, a Notice of Appeal must be filed within fifteen (15) days of the acceptance by the Court of Appeals

The Court Reporter and the Jurors

The bailiff has charge of the jury. The court reporter should only have a very minimal contact with jurors.

In the event that a question arises during the deliberation, the judge, the parties, counsel, the sworn bailiff, the court reporter, and the jurors reconvene in the courtroom. The court reporter makes a record of any such proceeding. The court reporter should note and identify any juror member who speaks in the log.

In the event that the judge elects to send admitted exhibits to the jury room, the court reporter does not deliver the exhibits to the jury room; upon the order of the judge, the exhibits may be delivered to the sworn bailiff. The bailiff has the duty to see that the exhibits are returned to the custody of the court reporter. See Chapter 4.

The Court Reporter as a Witness

Contempt

IC 34-47-1-1 et seq. governs contempt actions. Direct contempt, as defined by IC 34-47-2-1, occurs during open court in the presence of the judge or outside of the courtroom but within the hearing of the judge. A witness who refuses to testify at a hearing or a trial may be punished by a direct contempt. See IC 34-47-2-2. IC 34-47-2-4(b)(2) provides that the court reporter may be required either to testify or to give an affidavit regarding observations of contumacious conduct. A court reporter may testify in cases where the judge holds a courtroom spectator in contempt for disrupting a proceeding. A court reporter may testify regarding any observation of attorney, witness, or juror misconduct in or close to the courtroom. Arrangements will have to be made for another court reporter to make a record in the event the court reporter is called to testify as a witness.

Trial In Absentia

In subsection IC 35-33-7-5 & IC 35-33-7-6 - [Initial Hearing; Indigent Right to Counsel, supra, the importance of making a record of occurrences when the criminal defendant appeared before the judge and received personal notice of the trial date was noted. In the event that a defendant fails to appear for trial, the prosecutor may call the court reporter as a witness to testify to the fact that the defendant had received actual advance notice of the trial date. Once this fact has been established, the judge may proceed to try the defendant.

When a party fails to appear in a civil case, the judge may either dismiss the case or enter a default judgment. The judge may institute contempt proceedings.

The court reporter must make arrangements for another court reporter to make a record in the event that the court reporter is called to testify as a witness.

Rules Governing the Preparation of a Transcript

An appeal is initiated by the filing of a Notice of Appeal with the clerk of the trial court who is responsible to immediately provide the reporter with a copy of the Notice of Appeal. App. R. 10. The burden of requesting an adequate Record on Appeal is imposed upon the party taking the appeal.

The Notice of Appeal must be filed within thirty (30) days of the entry of final judgment or, in the case of an interlocutory appeal as a matter of right, the entry of the interlocutory order. In cases of discretionary interlocutory appeals the Notice of Appeal must be filed within fifteen (15) days of the Court of Appeals' acceptance of the interlocutory appeal. See App. R. 9 & 14.

The court reporter's duty to prepare a transcript is strictly limited by the language contained in the body of the Notice of Appeal. The Notice may either seek preparation of a transcript, which contains only selected portions of what transpired or seek the preparation of a transcript containing all matters where the court reporter made a record in a particular proceeding. See App. R. 9 (F).

Both T. R. 74 and Crim. R. 5 authorize a judge to use "other" persons to prepare a transcript.

The transcript becomes one (1) of the four (4) major sections of the Record on Appeal, which consists of volumes containing the transcript of evidence, exhibits, table of contents, and the Clerk's Record. Once separately certified as accurate and complete by the court reporter, the transcript is filed with the clerk of the court. See IC 33-15-23-5 and App. R. 11.

It is the obligation of the appellant (or appellant's counsel) to prepare the appendix containing the table of contents and copies of applicable documents. See App. R. 49-51.

Original Actions

Ind. Original Action Rules 2(F) and 3(C) requires that the party seeking relief must file a verified petition applying for the issuance of the writ with the Supreme Court Administrator; any transcript must accompany the petition of application. Any transcript must be separately certified by the judge, the court reporter, and the clerk of the court. See App. R. 7.2(A)(4), IC 33-15-23-5 and Crim. R. 5.

The Court Reporter and the Rights of the Indigent

Indigent's Right to File a Cause of Action Without the Payment of Filing Fees

An indigent may file a civil action, including a guardianship petition, without the payment of filing fees. See IC 33-19-3-2 [- however, there is a special rule for actions filed by inmates of the Indiana Department of Corrections, IC 33-19-3-2.5.] The indigent elects to file a verified written petition with the clerk of the court to waive filing fees. The judge may conduct a hearing to hear evidence regarding the present extent of indigent's financial resources. The judge may require that a court reporter make a record of this hearing. In the event that the judge denies the petition, the aggrieved indigent may undertake a direct appeal. The indigent is required to file a Notice of Appeal. The indigent is required to file a second petition to waive appellate filing fees with the Clerk of the Court of Appeals. If this petition is conditionally granted by the Court of Appeals, the indigent uses either App. R. 7.2(A)(3)(c) or App. R. 7.3 to prepare a Record of the Proceedings. The judge and the parties settle the transcript by agreement or by filing affidavits and counter affidavits. Although a judge is required to take notes during a proceeding (see IC 34-36-1-2), a court reporter may be required to assist the judge in preparation of an affidavit. Normally, a court reporter should have no direct involvement in preparation of the transcript. See Campbell v. Criterion Group, 605 N.E.2d 150, 160-161 (Ind. 1992); and Elliot v. Elliot, 634 N.E.2d 1345, 1349-1350 (Ind. Ct. App. 1994).

Indigent's Right to Legal Counsel at Public Expense

A criminal indigent's right to legal counsel at public expense was noted in subsections, IC 35-33-7-5 & IC 35-33-7-6 - Initial Hearing; Indigent Right to Counsel and Crim. R. 11.

The right to free counsel exists in civil and criminal cases. See IC 34-10-1-2.

In civil cases indigent elects to file a petition for the appointment of counsel that contains some of the elements of a petition for waiver of filing fees. The judge may conduct a hearing to hear evidence regarding the present extent of indigent's

financial resources. The judge may require that a court reporter make a record of this hearing. If the judge denies the petition for counsel, aggrieved indigent may undertake a direct appeal. Indigent is required to file a Notice of Appeal. Indigent is required to file a second petition to waive appellate filing fees with the Clerk of the Court of Appeals.

Indigent's Right to a Transcript at Public Expense

In civil cases, the indigent is permitted to file a petition asking for a complete transcript. See IC 33-1-4-1. A petition contains some of the elements of a petition for waiver of filing fees. The judge may conduct a hearing to hear evidence regarding the present extent of the indigent's financial resources. The indigent must demonstrate both indigence and that the procedures contained in either App. R. 7.2(A)(3)(c) or App. R. 7.3 are not sufficient to preserve the right to appeal. The judge may require that a court reporter make a record of this hearing. If the judge denies the petition for counsel, the aggrieved indigent may undertake a direct appeal. The indigent is required to file a praecipe. The indigent is also required to file a second petition to waive appellate filing fees with the Clerk of the Court of Appeals

Guilty Pleas

Crim. R. 10 requires the preparation and preservation of a transcript of a guilty plea hearing and a sentencing hearing in all criminal felony and misdemeanor cases. P.C.R. 1 permits an offender who has pleaded guilty to file a petition for post-conviction relief. P.C.R. 1(9) entitles a pro se indigent offender to a transcript of a guilty plea and sentencing hearing at public expense. The present practice is that the right to a transcript does not arise until: (1) after the offender has actually filed a petition for post-conviction relief, (2) after the judge has determined that a summary denial is not appropriate, and (3) after the judge has scheduled a hearing on the petition. See subsection, P.C.R. 1(5), (6), (7), and (9) herein. The petition for post-conviction relief must contain an affidavit of indigency. See P.C.R. 1(9)(a).

Office of Public Defender Has Right to a Transcript at Public Expense

IC 33-1-7-5 authorizes the Indiana Office of the Public Defender to obtain a transcript at public expense for a criminal defendant. It is the reviewing court's responsibility to approve the expense of a transcript. See IC 33-1-7-6.

State Pays for Transcript in Civil Cases

In the event that the State files a Notice of Appeal to initiate an appeal in a civil case, the State does pay for a transcript. See 33-15-23-5. The State does not pay the clerk of the court fees for the clerk's portion of the Record. See IC 33-19-3-1 and IC 33-19-6-1.

Indigent's Right Not to Pay Restitution, Fines and Costs Imposed as a Part of the Sentence in Criminal Cases

The judge may impose restitution, fines and costs as a part of the judge's sentencing discretion in a criminal case. Before any of these sanctions may be imposed, the judge must hold a hearing and take testimony regarding offender's ability to pay. The court reporter must make a record of this hearing. See Crim. R. 11, IC 33-19-2-3, IC 35-38-1-18, and IC 35-50-5-3.

Indigent's Right to Obtain Transcript Submitted to an Administrative Law Judge for the Purpose of Judicial Review

For the purpose of judicial review of a final decision of an administrative agency of a governmental entity, indigent may apply to a judge for a transcript at public expense. The transcript contains evidence or testimony presented to an administrative law judge. The judge must conduct a hearing to hear evidence regarding the present extent of indigent's financial resources. The court reporter may be required to make a record of this hearing. If the judge denies the petition, the aggrieved indigent may undertake an appeal. See IC 4-21.5-5-13(c) and (d) and IC 33-19-3-2.

The Court Reporter and the Right of Public and Press to Access Public Records

Public Access to Records

Indiana has adopted a public access to records law. See IC 5-14-3-1 et seq. IC 5-14-3-2 defines the term "public agency"; the term includes any office exercising judicial power in a limited geographical area. IC 5-14-3-2 defines the term "public record" broadly to include any writing, paper, tape recording that is either created, received, maintained, used, filed, or generated on magnetic or machine-readable media. IC 5-14-3-3 provides that the agency may require that the request for access identify with reasonable particularity the information sought and that the agency may require a written request for access. IC 5-14-3-4(a) lists categories of records are excluded from disclosure. Chief exclusions include: (a) records declared confidential by state statute [examples: wiretap information and juvenile records]; (b) trade secrets [see IC 24-2-3-2]; (c) confidential financial information; (d) patient medical records and charts without a written consent; and (e) those records declared confidential by rule adopted by the Indiana Supreme Court [see Admin. R. 9]. IC 5-14-3-5.5 defines the term "judicial public record"; the judge may order a judicial public record to be sealed. IC 5-14-3-9 describes the procedure applied in the event that a member of the press or a member of the public claims to have been wrongfully denied access to a public record.

The current practice is that no audio electronic recording tape or computer disk of any proceeding, hearing or trial is released to any member of the public, including members of the press, unless the court reporter has first obtained the express verbal consent of the judge. This practice allows the judge the option to initiate the statutory procedure to seal the record. If the judge permits access, members of the press and

members of the public may have the right to a copy of any audio electronic recording tape or computer disk.

The present practice is that members of the public and the press are not entitled to access to trial exhibits during the course of a trial. This practice is based in the inherent power of the judge to control the conduct of the trial; here, the practice is designed to prevent possible alteration or other tampering. See Chapter 1, **Special Requirements**.

Counsel for a Party

Occasionally, counsel for a party may request that a transcript of a portion of the record be prepared during a jury trial. Usually, the transcript of a portion of the record is read to the jury during final argument. Counsel is permitted access. See IC 33-15-23-5 (party may request preparation of a transcript).

Open Door Law

IC 5-14-1.5-2 defines the term "public agency" without reference to judicial power. It appears that courts may not be subject to the Indiana Open Door statute.

The Open Courtroom

The Sixth Amendment to the U.S. Constitution and Article 1 § 13 of the Indiana Constitution grant the right of a public trial to a defendant in a criminal case. Article 1 § 12 of the Indiana Constitution requires that courts shall be open. Members of the public and the press have access to any proceeding before the judge. The right of access to an open courtroom is expressly limited by statute in juvenile cases. See IC 31-32-6-1 et seq. Occasionally, a judge may close the courtroom. IC 5-14-2-1 et seq. permits a judge to close the courtroom. A hearing may be required. The court reporter must make a record of any such hearing, and the court reporter must make a record of any finding announced by the judge from the bench.

The Court Reporter and the Appellant - Statutes and Rules Governing Charges and Costs

Statutes and Rules Governing Charges for Preparation of a Transcript

The legislature has specifically directed that a court reporter make a record of certain proceedings; some of these are listed in the section **Selected Criminal Statutes Which Require the Court Reporter to Make a Record**. The Rules of Criminal Procedure mandate that certain transcripts be prepared. The present practice is that no fee is charged for the preparation of any transcript expressly ordered by the judge or by the language of a rule of criminal procedure; other persons or entities that order the preparation of a transcript may be charged a fee pursuant to IC 33-15-23-5.

Private persons may be required to pay in advance for the preparation of a transcript. See IC 33-15-23-5. This provision does not apply to governmental entities, including the State; the State is not permitted to pay in advance for services. See IC 5-11-10-1 and IC 4-13-2-20.

A court reporter is permitted to charge a fee for the preparation of any transcript, except those required to be prepared by the judge or by operation of either rule or statute. See IC 33-15-23-5. Fees charged are set by local rule.

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